

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Southern Union Company

FILE NO.: 05-008-HW

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, ("R.I. Gen. Laws") you are hereby notified that the Director of the Department of Environmental Management (the "Director" of "DEM") has reasonable grounds to believe that the above-named party ("Respondent") has violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Facts

- (1) The facility is located at 91 Tidewater Street in Pawtucket, Rhode Island (the "Facility").
- (2) The Facility was operated by the Respondent doing business as the New England Gas Company.
- (3) On February 19, 2004 the Respondent registered with the DEM as a small quantity hazardous waste generator at the Facility pursuant to the DEM's *Rules and Regulations for Hazardous Waste Management* (the "Hazardous Waste Regulations") and pursuant to Title 40 of the Code of Federal Regulations ("40 CFR") under the name of "New England Gas Co Tidewater" with the U. S. Environmental Protection Agency ("EPA") identification number RIR000501130.
- (4) On October 19, 2004, the Respondent's representative called DEM to report a spill at the Facility. On the same day, DEM received a call from Clean Harbors Environmental Services, Inc. ("Clean Harbors") reporting a release of mercury to the ground surface at the Facility.
- (5) On October 20, 2004, DEM inspected the Facility and spoke with Marc Viera, who identified himself as the Respondent's environmental coordinator. Mr. Viera stated the following:
  - (a) The company was removing natural gas flow regulators containing mercury (the "regulators") from its service lines;
  - (b) The regulators are transported to the Facility for mercury extraction;

- (c) Once a sufficient quantity of regulators were accumulated at the Facility, the company hired an environmental contractor trained in handling mercury to extract the mercury;
  - (d) The contractor extracted the mercury from the regulators and placed it into thirteen (13) ounce wide-mouthed glass jars;
  - (e) The company was managing the recovered mercury as a scrap metal and sending it offsite for reclamation once a sufficient amount had been accumulated at the Facility;
  - (f) The company generated a hazardous waste in the form of wastewater that resulted from rinsing the empty regulators and any equipment used in the process; and
  - (g) The wastewater was managed as a hazardous waste.
- (6) During the October 20, 2004 inspection, DEM was unable to enter the building at the Facility in which Respondent conducted the mercury extraction process (the “Building”) due to the high levels of mercury vapor present in the Building as identified by Clean Harbors.
- (7) On October 21, 2004, DEM inspected the Building. The inspection revealed the following:
- (a) An unmarked red wooden storage box used for storing jars of liquid mercury, wrapped in plastic located in the eastern room of the Building; and
  - (b) Three (3) fifty five (55) gallon drums stored in the eastern room. Two (2) of these drums were labeled “mercury spill debris awaiting analysis” and the other was labeled “do not drink – for cleaning only”.
- (8) On October 25, 2004, DEM inspected the Facility and spoke with Robert Young and Mr. Viera. Mr. Young stated the following:
- (a) DEM misunderstood Mr. Viera’s statements during the October 20, 2004 inspection;
  - (b) The company initiated a mercury recycling program in 2001 that collected regulators and brought them to the Facility;
  - (c) The company hired International Environmental Trading Co., Inc. (“International Environmental”) to extract the mercury;
  - (d) The recycling occurred from June 2001 through December 2001 and that no further recycling occurred at the Facility after that date;

- (e) The mercury released at the Facility came from a locker of an employee in Fall River, Massachusetts who died in 2003. The company discovered several jars holding a significant amount of mercury in the locker and immediately called Clean Harbors to assist in removing the mercury from the employee's locker; and
- (f) The mercury was stored at the Facility since it was discovered in 2003.

Mr. Viera stated that he transported the mercury from the Fall River, Massachusetts facility to the Facility.

- (9) On October 27, 2004, DEM spoke with Troy DuGuay of International Environmental. Mr. DuGuay confirmed that his company worked at the Facility from June 2001 through December 2001 removing mercury from the regulators.
- (10) On or about October 28, 2004, DEM received a report from the Respondent dated October 28, 2004. The report included the following information:
  - (a) The mercury was apparently released from several small containers which were kept in a locked storage cabinet and not from the regulators; and
  - (b) The last time that the company's personnel were at the Facility was on September 20, 2004.
- (11) On December 10, 2004, the Respondent submitted a letter with attached documents to DEM. The letter and attached documents included the following information:
  - (a) The billing invoice prepared by Clean Harbors dated March 25, 2003, identified as NEGC-RIDEM 00801, showed that Clean Harbors arrived at a facility located on Charles Street in Fall River, Massachusetts on March 25, 2003, poured mercury out of several bottles at the Fall River facility into four (4) sample jars, vacuumed out a cabinet and took the jars to the Facility.
  - (b) A document dated August 27, 2003, entitled "Request for Proposal for Waste Segregation, Packaging Transportation and Disposal, 91 Tidewater Street, Pawtucket, RI 02860", identified as NEGC-RIDEM 02580, revealed that Respondent prepared a request for proposals ("RFP") to retain an environmental contractor to assist the company in the removal of liquid mercury from the following sources at the Facility:
    - (i) Approximately ninety (90) regulators;
    - (ii) One (1) plastic jug with approximately one (1) quart of liquid mercury;
    - (iii) Five (5) manometers each with approximately one (1) cup of mercury;

- (iv) Four (4) glass jars each with one (1) pint of mercury;
- (v) Two (2) steel vials each with approximately one (1) cup of mercury; and
- (vi) One (1) glass jar with approximately one (1) cup of mercury.

The RFP also included that the contractor transport and dispose (or recycle) removed liquid mercury including packaging removed liquid mercury into shipping containers that comply with U.S. DOT hazardous materials regulations.

- (c) An email sent by Mr. Viera to Mr. Young on July 9, 2004 and an attached document, also dated July 9, 2004, entitled "Request for Proposal for Waste Segregation, Packaging Transportation and Disposal", identified as NEGC-RIDEM 00802 through 00815, stated that the RFP included removal of one hundred sixty five (165) regulators at the Facility, as well as the additional liquid mercury described in paragraphs 11(b)(ii)-(vi), above.
- (12) On or about December 17, 2004, the Respondent submitted a letter and color photographs of the Facility and other properties that were impacted by the mercury release dated December 17, 2004. The photographs showed the following:
- (a) A photograph identified as NEGC-RIDEM 01651 depicts the entrance to the Building and the presence of clear plastic bags inside the Building;
  - (b) A photograph identified as NEGC-RIDEM 01657 depicts two (2) employees of Clean Harbors using a vacuum system to collect mercury that was spilled onto the ground surface in front of the Building;
  - (c) A photograph identified as NEGC-RIDEM 01660 depicts mercury that was spilled onto the ground surface at the Facility;
  - (d) Photographs identified as NEGC-RIDEM 01669, 01670, 01671 and 01672 depict plastic bags holding regulators stored in the Building;
  - (e) A photograph identified as NEGC-RIDEM 01673 depicts a "kiddy pool" holding mercury that was spilled in the Building; and
  - (f) A photograph identified as NEGC-RIDEM 01675 depicts several white plastic buckets holding regulators in plastic bags at the Facility.
- (13) On or about December 23, 2004, the Respondent submitted additional documents to DEM dated December 23, 2004. The documents included the following information:

- (a) Meeting minutes entitled “NE Gas Co./Cumberland Operations – Safety Committee” dated May 20, 2004, identified as NEGC-RIDEM 01777 through 01778, revealed that Rob Steere questioned the safeness of the mercury disposal area at the Facility.
  - (b) Meeting minutes entitled “NE Gas Co./Cumberland Operations – Safety Committee” dated June 17, 2004, identified as NEGC-RIDEM 01775 through 01776, revealed that Marc Viera was to meet with Rob Steere and Richard Baillargeon on the safeness of the mercury disposal area at the Facility.
  - (c) Meeting minutes entitled “NE Gas Co./Cumberland Operations – Safety Committee” dated September 16, 2004, identified as NEGC-RIDEM 01773 through 01774, revealed that Rob Steere again reported having to repair the doors of the mechanical building (mercury storage building) at Facility due to possible break-ins by homeless people. Mr. Steere suggested boarding up this building as there are no longer security people stationed at the Facility.
- (14) The Respondent submitted forms to DEM that were signed on April 17, 2001, March 8, 2002 and February 19, 2004 for the Facility. The Respondent stated on the forms that the company was generating a hazardous waste having the characteristics of corrosivity, EPA waste code D002, and toxicity, EPA waste code D009 (mercury).
  - (15) On or about May 4, 2005, the Respondent submitted additional documents to the DEM. The documents, identified at NEGC-RIDEM 00021 through 00024, revealed that on October 23, 2004 the Respondent shipped containers of hazardous waste mercury from the Facility off site for proper disposal.
  - (16) On December 3, 2007, the Respondent submitted a form to the DEM indicating that the Facility was inactive and that the Respondent had discontinued all hazardous waste activities at the Facility.
  - (17) On October 2, 2009, the Respondent was found guilty on one count of storing a hazardous waste without a permit – waste liquid mercury (42 U.S.C. §6928(d)(2)(A)) in the United States District Court, District of Rhode Island.
  - (18) Mercury that has been released to the environment, or otherwise no longer used for its intended purpose, has been designated by the EPA as a hazardous waste for the characteristic of toxicity when the concentration of mercury in the waste exceeds 0.2 parts per million and has assigned a waste number of D009.
  - (19) Storage of hazardous waste in excess of ninety (90) days required a permit from the DEM in accordance with the DEM’s Hazardous Waste Regulations 7.0.

- (20) Upon information and belief, Respondent stored hazardous waste (mercury) at the Facility from on or about March 25, 2003 through and until October 23, 2004.
- (21) The Respondent did not apply for nor obtain a permit from DEM to store hazardous waste at the Facility.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **R.I. Gen. Laws Section 23-19.1-10, DEM's Hazardous Waste Regulation 7.00A & B and 40 CFR 270.1(b)** – requiring a person to obtain a permit from the DEM prior to storing hazardous waste.

D. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

**Two Hundred Forty Seven Thousand Four Hundred Ninety Eight Dollars**  
**(\$247,498.00)**

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within thirty (30) days of your receipt of this Notice of Violation ("NOV"). Payment shall be in the form of a certified check, cashiers check or money order made payable to the "General Treasury - Environmental Response Fund," and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondent in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

E. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Paragraphs B through D above. All requests for hearing MUST:
  - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);

- (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk  
DEM - Administrative Adjudication Division  
One Capitol Hill, 2<sup>ND</sup> Floor  
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.
- (2) A copy of each request for hearing must also be forwarded to:

Susan Forcier, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> Floor  
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Susan Forcier at the DEM Office of Legal

Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section E above.

FOR THE DIRECTOR

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David E. Chopy, Chief  
DEM Office of Compliance and Inspection

Date: \_\_\_\_\_

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_  
the within Notice of Violation was forwarded to:

Southern Union Company  
c/o Corporation Service Company, Registered Agent  
222 Jefferson Boulevard, Suite 200  
Warwick, RI 02888

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, HAZARDOUS WASTE

File No.: 05-008-HW

Respondent: Southern Union Company

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C(1) – Storage of hazardous waste without a permit	Type I (\$10,000 Max. Penalty)*	Major	\$10,000	19 months	\$190,000.00
<b>SUB-TOTAL</b>					<b>\$190,000.00</b>

\*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ECONOMIC BENEFIT FROM NONCOMPLIANCE	
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS: - THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.	
Economic benefit of noncompliance identified by the State of Rhode Island for failing to pay for services required to obtain a permit for the treatment, storage and disposal of hazardous waste and failing to pay an application fee for a permit to operate a hazardous waste treatment, storage and disposal facility. The cost for services required to prepare a permit application was estimated using the EPA Guidance Document entitled "Estimating Costs for the Economic Benefit of RCRA Non-Compliance" dated March 1997 and the application fee schedule from Rhode Island's Rules and Regulations for Hazardous Waste Management.	
Cost Estimate for preparing a permit application	\$32,498.00
Permit Fee	\$25,000.00
<b>SUB-TOTAL</b>	
	<b>\$57,498.00</b>

**ADMINISTRATIVE PENALTY SUMMARY** *(continued)*

**COST RECOVERY**

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS= \$247,498.00**

**PENALTY MATRIX WORKSHEET**

CITATION: Storage of hazardous waste without a permit

VIOLATION NO.: C (1)

<b>TYPE</b>		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> State and Federal Regulations require any person who stores hazardous to obtain a permit from the State prior to conducting any activity at the site. The primary purpose behind the permit requirement, which is a core element of the regulatory program, is to enable the State to review the operator's design plans, emergency control equipment and waste management procedures to ensure that the facility will be operated safely minimizing the threat posed by such activities to human health and the environment.</p> <p>(B) <b>Environmental conditions:</b> The facility is located less than one quarter mile from an elementary school and several private residences and is located approximately 800 feet from the Blackstone River.</p> <p>(C) <b>Amount of the pollutant:</b> Approximately 141 pounds of mercury.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Mercury is a toxic element and can affect humans who are exposed to it by either dermal exposure or inhalation of its vapors causing pronounced impacts to the nervous system.</p> <p>(E) <b>Duration of the violation:</b> 19 months. Mercury was stored at the facility from at least March 23, 2003 until October 23, 2004.</p> <p>(F) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</p>		
(continued)		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to take reasonable and appropriate steps to prevent the violation by obtaining a permit from DEM prior to storing the mercury at the facility. Review of several Material Safety Data Sheets submitted by the Respondent to the DEM, identified as NEGC-RIDEM 000254 through 00261 and NEGC-RIDEM 00352 through 00356, revealed that Respondent was aware that mercury is a highly toxic compound capable of having pronounced impacts on the health of humans and animals that are exposed to it either by direct contact with their skin or by inhalation of its vapors. On November 8, 2004, DEM received a letter from the Respondent. The letter included the following information:
- The company first became aware of the release at the Facility on the morning of October 19, 2004;
  - The Pawtucket Fire Department notified Respondent of the discovery of a mercury release located at the Lawn Terrace Apartments on Pleasant Street in the city of Pawtucket (the "Pleasant Street Release");
  - The company immediately notified DEM and Clean Harbors to begin the clean up of the Pleasant Street Release; and
  - The Pleasant Street Release affected five (5) apartment buildings containing forty eight (48) units and two (2) other residential properties.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized in this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Respondent had complete control over the occurrence of the violation and failed to take steps to prevent the occurrence. Respondent was found guilty of a criminal charge of storing mercury waste without a permit in the United States District Court for the District of Rhode Island.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>  X  </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$10,000</b>	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500